

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL: CS/SB 1876

INTRODUCER: Agriculture and Senator Montford

SUBJECT: State Hemp Program

DATE: February 4, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	Fav/CS
2.			IT	
3.			RC	

Please see Section IX. for Additional Information:
 COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1876 makes changes to the state hemp program. Specifically, the bill:

- Includes hemp extract in the definition of “food” in the Florida Food Safety Act;
- Requires persons who operate minor food outlets that sell hemp extract to obtain a food permit from the Department of Agriculture and Consumer Services (department);
- Removes a reference to the Department of Health’s regulation of medical marijuana in the definition of the term “contaminants unsafe for human consumption;”
- Includes a substance or compound that is intended for inhalation in the definition of “hemp extract;”
- Exempts synthetic CBD oil and seeds and seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration from the definition of “hemp extract;”
- Modifies the way in which delta-9-tetrahydrocannabinol is measured in hemp extract;
- Clarifies that a hemp extract container must contain the number of milligrams of each cannabinoid per serving;
- Provides that hemp extract that does not meet certain requirements shall be considered adulterated or misbranded;
- Prohibits products that are intended for inhalation and are made from hemp extract from being sold to a person who is under 21 years old;
- Allows the department to contract with entities to provide sample collection, laboratory testing, and disposal services; and
- Provides a process for the department to notify a licensee when hemp is produced with a THC level that exceeds the allowable limit as well as removal and destruction procedures.

II. Present Situation:

Industrial Hemp

Industrial hemp is a *Cannabis sativa* plant (cannabis) that has been cultivated for approximately 10,000 years as a fiber and grain crop. It is used for fiber, building materials, forages (animal feed), and pain relief as a topical oil.¹

Cannabis

Cannabis is a Schedule I controlled substance.² It is a felony of the third degree³ to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida.⁴ As a controlled substance in ch. 893, F.S., “cannabis” is defined to mean: all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986, F.S., [the Compassionate Medical Cannabis Act of 2014], hemp as defined in s. 581.217 [the state hemp program], or industrial hemp as defined in s. 1004.4473 [industrial hemp pilot projects].⁵

Medical Marijuana

On November 4, 2016, Amendment 2 was approved by the electors and now is Article X, section 29, of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Florida Department of Health.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.⁶ The bill revised the Compassionate Medical Cannabis Act of 2014⁷ in s. 381.986, F.S., to implement Article X, section 29 of the Florida Constitution.

¹ See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited January 24, 2020).

² Section 893.03(1)(c)7., F.S.

³ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

⁴ Section 893.13(1)(a)2., F.S.

⁵ Section 893.02(3), F.S.

⁶ Chapter 2017-232, Laws of Fla.

⁷ Chapter 2014-157, Laws of Fla.

The term medical marijuana includes two distinct forms of the plant genus *Cannabis*:

- Marijuana without any limitation or restriction on the percentage of THC;⁸ and
- “Low-THC cannabis” in which the percentage of THC is limited to 0.8 percent or less and has more than 10 percent of cannabidiol⁹ weight for weight.¹⁰

The Coalition for Medical Marijuana Research and Education located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., may also conduct medical marijuana research and education.¹¹

A MMTC and a qualified patient or caregiver are specifically exempt from the criminal prohibition against the possession of cannabis.¹²

2014 Federal Farm Bill and State Industrial Hemp Pilot Programs

The Agricultural Improvement Act of 2014 (2014 Farm Bill) defined industrial hemp and allowed state departments of agriculture or universities to grow and produce industrial hemp as part of research or pilot programs. Specifically, the law allowed universities and state departments of agriculture to grow or cultivate industrial hemp if:

- The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.¹³

The 2014 Farm Bill defines “industrial hemp” to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁴

Section 1004.4473, F.S., authorizes the Florida Department of Agriculture and Consumer Services (department) to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, any land grant university in the state that has a college of agriculture, and any Florida College System institution or state university that has an

⁸ THC, or tetrahydrocannabinol, is the main active ingredient in cannabis and is responsible for most of the psychological effects of cannabis.

⁹ Cannabidiol (CBD) is a chemical compound, known as a cannabinoid, found in cannabis. CBD does not have the same psychoactivity as THC. See Michael J Breus, *Despite What You May Think... CBD Is Not Weed* (Sept. 20, 2018), Psychology Today, available at: <https://www.psychologytoday.com/us/blog/sleep-newzzz/201809/despite-what-you-may-think-cbd-is-not-weed> (last visited January 24, 2020).

¹⁰ See ss. 381.986(1)(e) and (f), F.S.

¹¹ Section 1004.4351, F.S.

¹² See s. 381.986(14), F.S.

¹³ Agricultural Improvement Act of 2014, Pub. L. No. 113-79, s. 7606, 128 Stat. 912 (2014) (codified at 7 U.S.C. s. 5940).

¹⁴ *Id.*

established agriculture, engineering, or pharmacy program.¹⁵ The purpose of the pilot projects is to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector in this state. The department has adopted a rule addressing safety, compliance, and accountability and other concerns.¹⁶

2018 Federal Farm Bill

In the 2018 Farm Bill, the U.S. Congress legalized industrial hemp as an agricultural product by removing hemp's classification as a controlled substance.¹⁷ The 2018 Farm Bill defines "hemp" to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁸

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the United States Secretary of Agriculture and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be produced;
- Testing methods for determining THC concentration levels of hemp;
- Methods for effective disposal of noncompliant products;
- Enforcement procedures;
- Inspection procedures; and
- Certification procedures for the persons authorized to produce hemp producers, test hemp products, inspect hemp producers, and enforce the provisions of the state or tribal plan.¹⁹

State Hemp Program

The state hemp program was created within the department to regulate the cultivation of hemp in Florida.²⁰ The department shall seek federal approval of the state plan for the regulation of the cultivation of hemp with the United States Secretary of Agriculture in accordance with the Agricultural Improvement Act of 2018 within 30 days of adopting rules.²¹ A license is required to cultivate hemp²² and to obtain a license a person must apply to the department and submit a full set of fingerprints.²³ A person seeking to cultivate hemp must provide the department with a

¹⁵ Section 1004.4473(2)(a), F.S.

¹⁶ Fla. Admin. Code R. 5B-57.013 (2018).

¹⁷ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 12619, 132 Stat. 409 (2018) (codified at 21 U.S.C. 802(16)).

¹⁸ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639o).

¹⁹ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639p).

²⁰ See s 581.217, F.S.

²¹ Section 581.217(4), F.S.

²² Section 581.217(5)(a), F.S.

²³ Section 581.217(5)(b), F.S.

legal land description and GPS coordinates of where the hemp will be cultivated.²⁴ The department shall deny an application under certain circumstances.²⁵

Florida Seed Law

The duty of administering the Florida Seed Law and enforcing its provisions and requirements is vested in the department²⁶ and the Florida Seed Law²⁷ is intended as a comprehensive and exclusive regulation of seed. The department shall sample, inspect, analyze, and test agricultural, vegetable, flower, tree, or shrub seed transported, sold, offered or exposed for sale, or distributed in the state for sowing or planting purposes.²⁸

Generally Recognized as Safe

Under sections 201(s) and 409 of the Federal Food, Drug and Cosmetic Act, any substance that is intentionally added to food is a food additive that is subject to premarket review and approval by the U.S. Food & Drug Administration (FDA), unless the substance is generally recognized, among qualified experts, as having been adequately shown to be safe under the conditions of its intended use, or unless the use of the substance is otherwise excepted from the definition of a food additive.²⁹ The FDA evaluated three products by Fresh Hemp Foods, Ltd. and determined that hulled hemp seed, hemp seed protein powder, and hemp seed oil were generally recognized as safe.³⁰ This applies to products from other companies if they are manufactured in a way that is consistent with the evaluated products and they meet the listed specifications.³¹

Hemp Extract

Hemp extract is a substance or compound intended for ingestion that is derived from or contains hemp and that does not contain controlled substances.³² Hemp extract may only be sold in this state if the product has a certificate of analysis prepared by an independent testing laboratory and is distributed or sold in packaging that meets certain requirements.³³

III. Effect of Proposed Changes:

CS/SB 1876 makes a number of changes to the state hemp program. The bill includes hemp extract in the definition of “food” in the Florida Food Safety Act. It requires persons who operate minor food outlets that sell hemp extract to obtain a food permit from the department. It removes a reference to the Department of Health’s medical marijuana regulations in the definition of

²⁴ Section 581.217(5)(d), F.S.

²⁵ Section 581.217(5)(e), F.S.

²⁶ Section 578.11(1), F.S.

²⁷ Chapter 578, F.S.

²⁸ Section 578.11(1), F.S.

²⁹ See U.S. Food & Drug Administration *Generally Recognized as Safe* at: <https://www.fda.gov/food/food-ingredients-packaging/generally-recognized-safe-gras> (last visited January 24, 2020).

³⁰ See *FDA Responds to Three GRAS Notices for Hemp-Seed Derived Ingredients for Use in Human Food* at: <https://www.fda.gov/food/generally-recognized-safe-gras/about-gras-notification-program> (last visited January 24, 2020),

³¹ *Id.*

³² Section 581.217(3)(e), F.S.

³³ Section 581.217(7), F.S.

“contaminants unsafe for human consumption.” It exempts synthetic CBD oil and seeds and seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration from the definition of “hemp extract” and adds a substance or compound intended for inhalation to that definition.

The bill removes a requirement that hemp extract be tested on a dry-weight basis and clarifies that a container must contain the number of milligrams of each cannabinoid per serving. It provides that hemp extract sold in violation of s. 581.217 (6)(a), F.S. is considered misbranded or adulterated. It prohibits products that are intended for inhalation and made from hemp extract from being sold to a person who is under 21 years old. It allows the department to contact with entities to provide sample collection, laboratory testing, and disposal services. Finally, the bill provides a process for the department to notify a licensee when hemp is produced with a THC level that exceeds the allowable limit. It requires the licensee to remove and destroy the plants that are out of compliance within 10 days of receiving the notice. If the licensee fails to comply, the department shall destroy the plants at the expense of the licensee.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Small food retailers will now need to obtain a food permit if they sell hemp extract.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 500.03, 500.12, and 581.217.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on February 4, 2020:

- Reverts seed certification requirements back to current law;
- Adds hemp extract to the definition of “food” in the Florida Food Safety Act;
- Requires small food retailers who are normally exempt from a food permit to obtain one if they sell hemp extract.
- Adds products that are inhaled to the definition of “hemp extract” and prohibits those products from being sold to someone under the age of 21;
- Deletes the prohibition on selling products that contain hemp extract to someone under the age of 18;
- Removes synthetic CBD oil from the definition of “hemp extract;” and
- Allows the department to contract for sample collection, laboratory testing, and disposal services.

B. Amendments:

None.